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OFFICE OF PETITIONS

In re Application of
Badeau, et al.
Application No. 09/851,300
Filed: May 8, 2001
Attorney Docket No. 4191-00025

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(b) pursuant to 37 CFR 1.137(f), filed August 7, 2003.

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an international application filed on March 14, 2002. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Applicant filed a "Request to Rescind Previous Nonpublication Request" on March 18, 2002 (Certificate of Mailing under 37 CFR 1.8 dated March 8, 2002, however, the rescission request was not eligible for the benefits of 37 CFR 1.8.¹). Accordingly, as the rescission was not made until after the filing of the PCT application, applicant was required by 35 U.S.C. 122(b)(2)(B)(iii) to provide notice of the PCT filing not later than forty-five days after the date the PCT application was filed to avoid abandonment of the application.²

In view of the above, this application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

¹ See "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv)", O.G. (July 1, 2003).

² See *id.*

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The petition fee of \$1,300 has been charged to Deposit Account No. 01-2000, as authorized.

The application is being forwarded to Technology Center 1700 for consideration of the amendment filed August 25, 2003.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions